

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7383 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
Nos.1 & 2 Yes. Nos. 3 to 5 No.

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DEESA TALUKA ANUSHUCHIT JATI SAMUDAIAK KETI SAHAKARI MANDALI

Versus

STATE OF GUJARAT

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Appearance:

MR SHIRISH JOSHI for Petitioner

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CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 13/10/97

ORAL JUDGEMENT

Heard learned counsel.

The petitioner is Sahakari Mandali claiming certain land in the name of Deesa Taluka Anushuchit Jati Samudaik Ketu Sahakari Mandali Limited. It claims to have been registered as Co-operative Society on 23.11.1994. The petitioner's case is that it has about 11 members excluding the present deponent viz. Khemchand Solanki (the Chairman of this Society) through whom this

petition has been filed. These members are landless labourers. Shri Khemchand M.Solanki himself has 1 Acre 20 Gunthas of land in his joint account with other family members. Other members are working as labourers. It is the further case of the petitioner that it was a proposed society when an application was moved for grant of some agricultural land. An order was passed by the Dy. Collector, Palanpur on 23.5.1992 whereby 38 Acres and 30 Gunthas of land was granted to the petitioner, but the grievance is that it was not one piece of land of one single village but same was scattered in different villages. This land of 48 Acres and 30 Gunthas was out of the land vested in the State Government as excess land from the private owners and occupiers. It was scattered into five villages and it is also stated that these five villages do not form part of revenue group of villages in the vicinity of each other. Thus, 48 Acres of the land was available with the petitioner society. The grievance is raised that all the members of the society could not work together. In this regard uncertain and vague averments have been made that effectively the petitioner did not get any land. It is also the case of the petitioner that while request was made to the authorities in the Co-operative Department and registered society had continued to represent to the authorities to grant certain land from the village 'Kant' to which all the members of the society belong. It was pointed out that there was some land available at village 'Kant' from which one single piece of 50 Acres of land could be given as grant to the petitioner society where all the members of the society can work and settle together. To be more specific the request was that land out of survey no. 237 which is earmarked as guachar and has enough spare land 50 Acres of land can be spared for the purpose of the petitioner. One such application was given on March 14,1992 to the Mamlatdar, Deesa mentioning that out of Survey No. 237, 60 Acres of land is in possession of the Forest Department which was not being used for any purpose by them and the society was prepared to have the said land on lease or on permanent grant on whatever condition the State Government may impose. Thereafter, another application dated 20.1.1993 was moved before the Collector, Banaskantha at Palanpur mentioning therein that out of 175 Acres of land which was given to the Forest Department 50 Acres of land could be given to the petitioner. Reference had also been made to above referred earlier letter dated 14.3.1992 pointing out that the original owner and occupier of the land had not allowed the petitioner to take possession of the said land. It is the case of the petitioner itself that original land vested in the Gram Panchayat by the

Government was to be utilised as gaucher land. But the said Gram Panchayat on its own and without obtaining prior permission of the Government gave 175 Acres of the land out of Survey No. 237 to the Forest Department. The matter was taken in revision but the Collector by his order dated 25.1.1993 cancelled the grant given by the Gram Panchayat in favour of the Forest Department and ordered the resumption of the said land of 175 Acres belonging to Survey No. 237. According to the petitioner on the strength of the order dated 25.1.1993 the land is now vested in the Government and is no more a gauchar land and yet allotment of this land to the petitioner society has been denied by the Government vide Collector, Banaskantha's communication dated 2.8.1997. The petitioner has also referred to application dated 23.3.1995 made to Mamlatdar, Deesa and the reply dated 12.9.1995 given by the Mamlatdar, Deesa mentioning that there was no land available for grant to the petitioner and that the gauchar land cannot be given over to the petitioner. The application dated 23.12.1996 has been directly moved before the concerned Collector pointing out that the land which had been earlier given to the Forest Department had been resumed back and was in possession of the Government. The Collector sent reply dated 27.12.1996 calling upon the petitioner to furnish certain details with regard to names of members etc. and the petitioner society sent reply dated 10.1.1997. On 28.2.1997 it was mentioned that the society needed only 50 Acres of land and the same was easily available, that the society was prepared to grow trees on the said land. On 14.3.1997 it was mentioned that the society made request to the the Prime Minister and also to the President of India. On 17.4.1997 the application was made to the Chief Minister of the State. The petitioner has complained that the Mamlatdar is not giving correct facts to the higher authorities which can be read from the contents of Mamlatdar's letter dated 9.1.1997. It has also been stated that 50 Acres of land had been given to the Airfield Oustees and the proposal was to give 30 Acres land to local pancharapole and 50 Acres of land had been given to the oustees of Seepu Dam and therefore, the said land could not be given to the petitioner. It was also mentioned that 175 Acres of land was in possession of the Forest Department and the petitioner submits that it was a statement against the record made by the concerned Mamlatdar because this 175 Acres of land which had been given to the Forest Department had been resumed back in terms of the order dated 25.1.1993 passed by the Collector, Banaskantha. Ultimate rejection of the petitioner's request by the Government of Gujarat is there in the communication dated 2.8.1997 sent to it by

the Collector.

Learned Counsel for the petitioner has argued that though the land in question was gaucher land as per the record, when 175 Acres of land had been given to the Forest Department by the Gram Panchayat and the Collector passed the order dated 25.1.1993, the land was resumed back by the Government and with the resumption of this land under section 96 of Gram Panchayat Act, 1961, it no more remained gaucher land and could be used for the public purpose. Learned Counsel submits that the petitioner society being a society of the members of Anushuchit Jati and if such society is claiming allotment of this land for cultivation, the same is a public purpose and therefore allotment of the land to the petitioner society could not be rejected nor the land could now be said to be a gaucher land. Learned Counsel has placed strong reliance on a decision of the Supreme Court in the case of Panchayat Varga Sharmajivi Samudaik Sahakari Khedut Co-op. Society Ltd and others Vs. Haribhai Mevabhai and others, reported in AIR 1996 S.C. Pg.2578.

I have considered the submissions made on behalf of the petitioner society. First of all the Court finds that in the facts of the present case as have been narrated by the petitioner itself, it cannot be said that the members of the petitioner society are absolutely landless. It is admitted case of the petitioner itself that 48 Acres of the land had been allotted for the members of the society. Merely because this land is situated in different villages it cannot be said that the members of the society are left without any land or that they are absolutely landless. In such matters it cannot be claimed as a matter of right that the entire group or certain members who have formed a society or propose to form a co-operative society should be given a land out of the same chunk or a piece of land in single village. The land for such purpose to landless parties is to be given as per the availability and it is also the case of the petitioner itself that the land which was allotted to the society i.e. 48 Acres as stated in para 2 was out of the excess land available with the Government according to the Ceiling Laws. Apart from it the deponent through whom this petition has been filed himself holds 1 Acre and 20 Gunthas of land. Thus, it is not at all a case in which the petitioner society can be said to be of absolutely landless persons.

Considering the contention raised on behalf of the petitioner that the land in question had been resumed

by the Government with the passing of the order dated 25.1.1993, it may be pointed out that admittedly the land in question Survey No. 237 was earmarked as gaucher land. Reference may be made to the averment made by the petitioner in para 3 and para 4. Merely because the Gram Panchayat had given 175 Acres of land out of Survey No.237 to the Forest Department and thereafter the Collector passed the order dated 25.1.1993 with reference to Section 96(4) and resumed it back, it cannot be said that it ceased to be a gaucher land. This order had to be passed by the Collector because the Gram Panchayat had no authority to pass on this land to the Forest Department because it was a gaucher land. The Gram Panchayat had not even taken permission of the Government before giving 175 Acres of land to the Forest Department and therefore, the Government found that the land which it had vested in the panchayat had been wrongly given to the Forest Department by the panchayat, and therefore, the order which had been passed by the panchayat transferring this land to the Forest Department was set aside and for that purpose the powers under section 86(4) were exercised by the Government and as such it cannot be said that with the passing of the order under section 96 of the Gram Panchayat Act, it ceased to be a gaucher land. Strictly speaking in the contents of the order dated 25.1.1993 passed by the Collector, Banaskantha, it has been clearly mentioned in para 2 that even at the time of the passing of this order dated January 25,1993 the land in dispute i.e. the land belonging to Survey No. 237 was continuing as gaucher land in the revenue records. In this view of the matter on the authority of Supreme Court's decision in the case of Panchayat Varga Sharmajivi Samudaik Sahakari Khedut Co.op.Society (Supra) even if it is considered that with the passing of the order dated 25.1.1993 the land has to be restored back from the Forest Department it cannot be said that it had ceased to be a gaucher land and there was no question of allotting any part of this land to the petitioner society for the purpose of agriculture and cultivation when the land in fact had been set apart as 'gaucher' and precisely this is a ground which has been mentioned in no uncertain term in communication dated 2.8.1997 by Collector, Banaskantha to the Chairman of the petitioner society based on the decision taken by the Government. I called upon the learned counsel for the petitioner to refer or produce any document on the basis of which it can be said that the land in question had ceased to be a gaucher land but the learned counsel for the petitioner has failed to point out any document except the construction placed by him on the order dated 25.1.1993 passed by the Collector, Banaskantha and in considered

opinion of the Court, this document is hardly sufficient to show that the land in question had ceased to be a gaucher land and the decision of the Supreme Court relied upon by the learned counsel for the petitioner in this regard is of no avail for the purpose of showing that the land in question is no more a gaucher land.

Learned Counsel for the petitioner submits that the petitioner society is a society of living human beings; they have a right better than animals for whom gaucher land is set apart. This argument far from being justified is not at all convincing. Merely because the animals cannot come to the Court if land which is meant for grazing is used for other purposes, it cannot be taken that the land which is essentially meant for grazing of the cattles and has been set apart by the Government as gaucher land should be made available to those who are in a position to come to the Court for the purpose of allotment of the land which is meant for grazing of those animals and cattles which have no means and tongue to approach the Court. No apathy can be shown to the grazing rights of the animals because the group of living human beings is able to approach the Court. Learned Counsel for the petitioner also submitted that the Government or the concerned Collector had not afforded any opportunity to the petitioner society before taking final decision against them in this regard. As the facts have been narrated in the earlier part of the order, it is apparent that the case of the petitioner society was through out represented and it cannot be said that in the facts of the present case the petitioner society had not been able to put up its case before the respondents. Even the fact that the land was a gaucher land, that it had been given to the Forest Department by panchayat, that it had been taken back by the Government from the Forest Department and all other relevant facts and all subsequent developments were fully known to the petitioner and therefore the contention is of no avail. In the Supreme Court decision as aforesaid they had requested for assignment of the waste land vested in the Gram Panchayat, the Gram Panchayat undoubtedly passed a unanimous resolution requesting the Collector to resume the land for assignment to the appellant society. Since the Gram Panchayat as a representative body passed the resolution, it would be obvious that the elected members represent the interest of the Gram Panchayat for effecting the constitutional goal. When the Gram Panchayat in turn passed the resolution, there was no obligation to issue notice to the villagers. It has been held that when the land or open site or vacant land or grazing land vested in the State is sought to be resumed

from the Gram Panchayat by the Collector for another laudable public purpose, there is no question of issuing notice to the villagers. Apart from it in the instant case no laudable public purpose as such was mentioned in the order dated 25.1.1993. All that has been mentioned in this order is that Gram Panchayat had failed to make use of this land for the purpose for which it was allotted. But the question of reservation was therefore of importance and therefore the order by which it was given to the Forest Department had been set aside and the land was resumed. Merely because the word 'reservation' is used, it cannot be said that the Government will take decision to use this land for the purpose of allotment of this land to the members of the petitioner society for agriculture and cultivation and therefore it was not at all necessary to hear the petitioner society before the decision was taken or passed by the Government on the basis of which the communication dated 2.8.1997 has been sent. Moreover the order dated 25.1.1993 with regard to the taking of the land back from the Forest Department had also been passed by the Collector, Banaskantha and now communication dated 2.8.1997 has also been sent by the Collector, Banaskantha in which it has been clearly mentioned that the land in question was a gaucher land and neither the Government nor the Collector, Banaskantha can be said to be oblivious of the earlier order dated 25.1.1993 while taking decision now in 1997 based on which the communication dated 2.8.1997 was sent.

Upshot of the adjudication of the points which had been raised by the learned counsel for the petitioner in this case is that this Special Civil Application fails and the same is hereby dismissed in limine.

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m.m.bhatt